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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,878	04/14/2004	Joseph Vogrig	78592	5675
22342 7590 01/27/2009 FITCH EVEN TABIN AND FLANNERY Mark W. Hetzler 120 SOUTH LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER				
PICKETT, JOHN G				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
01/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/823,878

**Applicant(s)**

VOGRIG ET AL.

**Examiner**

J. Gregory Pickett

**Art Unit**

3728

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-19 and 21-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 3-5, 7, 9-19 and 21-24 is/are allowed.  
6) ☒ Claim(s) 1, 2 and 6 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5 November 2008 has been entered.

Claims 1-7, 9-19 and 21-24 are pending in the application. Claims 8, 20 and 25-27 have been canceled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

2. Claims 1, 2, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange (US 3,892,313) in view of Edwards (EP 565302 A2) and Borgersen (US 4,007,834).

1: Lange discloses a unitary plate body 1 (Figures 1 or 4a-5) having an upper and lower surface, a plurality of fasteners 4, a plurality of apertures 2 with retaining portions 7 that retain the fasteners as claimed. Lange discloses the claimed invention except that it uses nails instead of rivets as the fasteners, and presents a linear pattern of the secured fasteners.

Edwards shows that rivets were an equivalent structure known in the art for use in a fastener strip (see e.g. Figure 3). Therefore, because these two fastening means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the rivets of Edwards for the nails of Lange. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982). Based upon the shape shown in Figure 3 of Edwards, when the rivets of Edwards are placed in the strip of Lange, then the heads would not project above the upper surface of body 1.

As to the non-linear arrangement, Borgersen teaches a circular arrangement of fasteners for use in disc-type driving mechanisms, And for said purpose, it would have been obvious to one of ordinary skill in the art to provide the holder of Lange-Edwards in a circular arrangement.

2: Lange is sized as claimed.

6: Lange discloses retaining portions at both the upper and lower portions of the retaining body 1 (see e.g. 4a & 5); such locations would be both above and below the fasteners of Edwards.

### ***Allowable Subject Matter***

3. Claims 3-5, 7, 9-19, and 21-24 appear to define over the available prior art and are allowed.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 2, and 6 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/  
Primary Examiner, Art Unit 3728